

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-05-3507
	§	
ARTHUR RAY HARRISON, <i>et al.</i> ,	§	
Defendants.	§	

**MEMORANDUM AND ORDER**

This action to recover unpaid income taxes is before the Court on Plaintiff's Motion to Strike Audra Harrison's Jury Demand ("Motion to Strike") [Doc. # 50], to which Audra Harrison filed a Response [Doc. # 52]. The Court has carefully reviewed the full record in this case, as well as the relevant legal authorities. Based on this review, the Court concludes that the Motion to Strike should be **granted**.

The United States seeks to recover from Defendant Arthur Ray Harrison unpaid federal income taxes, interest, and penalties which were assessed in 1996 and 1997. The United States seeks to collect those amounts from various properties, including real property which the United States alleges Harrison purchased in the name of his daughter, Defendant Audra Harrison.

Audra Harrison concedes that, pursuant to 26 U.S.C. § 7403, the taxpayer Defendant Arthur Harrison does not have a right to trial by jury on the claims against

him.<sup>1</sup> *See* Response [Doc. # 52], p. 1. This position is well supported by case law from and within the Fifth Circuit. *See, e.g., Gefen v. United States*, 400 F.2d 476, 478 (5th Cir. 1968); *United States v. Hassell*, 2002 WL 1359718, \* 2 (N.D. Tex. June 18, 2002).

The disagreement regarding Audra Harrison's jury demand is apparently the result of an inaccurate construction of the claims in the Second Amended Complaint. The United States alleges that two parcels of land in Brazos County, Texas, were acquired by the taxpayer, Arthur Harrison, and placed in the name of his daughter, Audra Harrison. *See* Second Amended Complaint [Doc. # 34], ¶ 13. The United States alleges that Arthur Harrison is the true owner of the properties and that Audra Harrison is the record owner only as a nominee of her father. *See id.* The United States asks the Court to find that Arthur Harrison is the true owner of the parcels and that the parcels are encumbered by the tax liens for unpaid income taxes.

Audra Harrison argues that she is entitled to a jury on the claim against her under the Texas Uniform Fraudulent Transfer Act ("TUFTA"). The TUFTA claim as it relates to these two parcels of land, however, is asserted only against Arthur Harrison. The United States alleges that Arthur Harrison fraudulently concealed his ownership

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<sup>1</sup> Arthur Harrison withdrew his jury demand. *See* Withdrawal of Demand for Jury Trial [Doc. # 20].

of the two parcels by placing them in his daughter's name and that it was Arthur Harrison's conduct that violated TUFTA. Only if the Court finds that Arthur Harrison acquired the properties and placed them in his daughter's name to conceal his ownership in violation of TUFTA will the United States' tax liens attach to the properties as belonging to the taxpayer. Given the United States's theory of the case, evidence that Audra Harrison purchased the parcels with her own funds may be presented and would be admissible only as a defense against the United States' claim against Arthur Harrison, the taxpayer.

It is agreed that there is no right to a jury on the United States' claims against Arthur Harrison. A careful reading of the Second Amended Complaint reveals that the only affirmative claim regarding the two parcels is against Arthur Harrison, the taxpayer, not against Audra Harrison, the alleged nominee. Audra Harrison is named in the Complaint as a necessary party because she appears as record title-holder of these properties, not because she is alleged to have personally violated TUFTA. Consequently, there is no right to a jury in this action to enforce tax liens, and it is hereby

**ORDERED** that the Motion to Strike Defendant Audra Harrison's Jury Demand [Doc. # 50] is **GRANTED**.

SIGNED at Houston, Texas, this **20th** day of **June, 2006**.

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Nancy F. Atlas  
United States District Judge